



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/842,372	04/25/2001	Diane C. Breidenbach		6560

7590  
Thomas A O'Rourke  
Bodner & O'Rourke  
425 Broadhollow Road  
Melville, NY 11747

05/03/2004

EXAMINER

PRUNNER, KATHLEEN J

ART UNIT

PAPER NUMBER

3751

DATE MAILED: 05/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/842,372

Applicant(s)

BREIDENBACH ET AL.

Examiner

Kathleen J. Prunner

Art Unit

3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 05 February 2004 and 09 February 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 April 2001 and 05 February 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input checked="" type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date. _____  | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Drawings*

1. The proposed drawing corrections, filed on February 5, 2004 (Paper No. 10), are disapproved. The proposed drawing correction to Fig. 1C is unnecessary since it already has a lead line for 18. In the proposed drawing correction to Fig. 1B, it is unclear how concentric circles indicate threading. The remaining proposed corrections would be approved if resubmitted in a separate paper restricted thereto.
2. The drawings are objected to because: (A) in Fig. 1D, a lead line is lacking for reference character 18; (B) Figs. 2, 4, 6, 8, 12 and 14 should be bracketed to indicate that the different parts of each drawing figure constitute a single entity; and (C) Figs. 9 and 10 contain unidentified dot-dash center lines. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.
3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference sign **not mentioned** in the description: **4.944** in Fig. 10. A proposed drawing correction or amendment to the specification to add the reference sign in the description, are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.
4. The replacement sheets of drawings were received on February 5, 2004 (Paper No. 10). These drawings, as well as the originally filed drawings, are disapproved as noted in the attached "Notice of Draftsperson's Patent Drawing Review" (PTO-948). In order to avoid abandonment, the drawing informalities must now be corrected. Correction can only be effected in the manner set forth in the attached notice.

*Response to Amendment*

5. In the amendment filed February 5, 2004 (Paper No. 9), the amendments to the specification make reference to paragraph numbers. However, the originally filed disclosure does not contain any paragraph numbers. Although the amendments to the specification have been made, hopefully to the correct paragraphs, it would be appreciated if future amendments make reference to the specific pages and either lines on each page or a particular paragraph (such as the third paragraph beginning on a specific line such as 9) on the page so as to avoid any possible confusion.

6. The amendment filed February 5, 2004 (Paper No. 9) is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: (A) on page 9, in the paragraph beginning on line 18 (and designated as paragraph "[0040]"), the added sentence beginning on line 12; (B) on page 9, in the paragraph beginning on line 18 (and designated as paragraph "[0040]"), the added sentence beginning on line 13; and (C) on page 11, in the first full paragraph beginning on line 4 (and designated as paragraph "[0042]"), the added language to the last 5 lines, i.e., lines 14-18. Applicant is required to cancel the new matter in the reply to this Office Action.

*Specification*

7. Applicant is reminded of the proper content of an abstract of the disclosure.

A patent abstract is a **concise statement of the technical disclosure of the patent and should include that which is new in the art to which the invention pertains**. If the patent is of a basic nature, the entire technical disclosure may be new in the art, and the abstract should be directed to the entire disclosure. If the patent is in the nature of an improvement in an old apparatus, process, product, or composition, the abstract should include the technical disclosure of the improvement. In certain patents, particularly those for compounds and compositions, wherein the process for making and/or the use thereof are not obvious, the abstract should set forth a process for making and/or use thereof. If the new technical disclosure involves modifications or alternatives, the abstract should mention by way of example the preferred modification or alternative.

Art Unit: 3751

The abstract should not refer to purported merits or speculative applications of the invention and should not compare the invention with the prior art.

Where applicable, the abstract should include the following:

- (1) **if a machine or apparatus, its organization and operation;**
- (2) if an article, its method of making;
- (3) if a chemical compound, its identity and use;
- (4) if a mixture, its ingredients;
- (5) if a process, the steps.

Extensive mechanical and design details of apparatus should not be given.

8. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract **should be in narrative form** and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said", should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns", "The disclosure defined by this invention", "The disclosure describes", etc.

9. The abstract of the disclosure is objected to because: (A) it is not a concise statement of the technical disclosure of the application; (B) it does not include that which is new in the art to which the invention pertains; (C) it does not contain the organization and operation of the apparatus; (D) it is not in proper narrative form; and (E) the first sentence is not grammatically correct. Correction is required. See MPEP § 608.01(b).

10. The following informalities in the specification are noted: (A) on page 1, in the first full paragraph, the status of the applications should be specified; (B) on page 1, on lines 2 and 4 of the first full paragraph (which should properly be indicated as paragraph "[0001]"), "disclosures" should read --disclosure-- and "are" should read --is--; (C) on page 5, a period should be inserted at the end of lines 13 and 17; (D) on page 9, in the paragraph beginning on line 18 (and designated as paragraph "[0040]"), on line 12, --center axis 20 of the-- should be inserted before "cap"; (E) on page 9, in the paragraph beginning on line 18 (and designated as paragraph

Art Unit: 3751

“[0040]”), on line 13, “20” should be deleted; (F) on page 11, line 3 (on line 11 in the designated paragraph “[0041]”), a comma should be inserted directly after “cream”; and (G) on page 11, line 6 (on line 3 in the designated paragraph “[0042]”), a comma should be inserted directly after “polish” (second occurrence). Appropriate correction is required.

11. The following informalities in the claims are noted: (A) in claim 1, on line 2, the comma (first occurrence) should be deleted; (B) in claim 1, on line 7, a comma should be inserted directly after “applicator”; and (C) in claim 31, on line 2, --both of-- should be inserted after “and”.

12. The specification is objected to as failing to provide proper antecedent basis for the claimed terminology. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). The claimed terminology which lacks such antecedent basis is as follows: (A) “a head of a receptacle”, as now called for by claim 1 on line 4. Correction is required.

### ***Claim Rejections - 35 USC § 112***

13. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

14. Claims 1-31 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for “a central body or sleeve 11 (See Figure 1A) that has a first end 12 and a second end 13” (note lines 20-21 on page 6 of the originally filed disclosure) and “In one embodiment, the sleeve may have two sections 14 and 15 which are connected by a sidewall 16” (note lines 4-5 on page 7 of the originally filed disclosure), does not reasonably provide enablement for “a sleeve that has a first end and a second end, which are connected by a sidewall”, as now called for by claim 1. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the invention commensurate in scope with these claims.

Art Unit: 3751

15. Claims 1-31 are also rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The originally filed disclosure fails to describe or provide support for "said first end being open such that said sidewall forms an orifice therein at each of the ends and said first end being configured so that it can receive a head of a receptacle", as now called for by claim 1 at lines 2-4.

16. Claims 1-31 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for "In one embodiment, one receptacle may be provided on its open end with a roller ball applicator 23 for applying product onto the user. In order to prevent essential oils and/or moisture from unnecessarily escaping from the receptacle the roller ball may have a spring that seats the ball firmly in the rim 24 of the receptacle" (note from line 20 on page 8 to line 1 on page 9 of the originally filed disclosure), does not reasonably provide enablement for "said receptacle has a rollerball applicator wherein the rollerball applicator comprises a means consisting of a spring-biased applicator normally sealing the open end of said receptacle when said applicator is pressed inwardly", as now called for by claim 1 at lines 7-10. The originally filed specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the invention commensurate in scope with these claims.

17. Claims 1-31 are also rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The originally filed disclosure fails to describe or provide support for "said receptacle has a rollerball applicator wherein the rollerball applicator comprises a means consisting of a

Art Unit: 3751

spring-biased applicator normally sealing the open end of said receptacle when said applicator is pressed inwardly”, as now called for by claim 1 at lines 2-4.

18. Claims 3-7 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The originally filed disclosure fails to describe or provide support for “a rollerball applicator” which is used to apply “a cosmetic product” as called for by claim 3. Hence, these claims are directed to new matter.

19. Claims 6 and 7 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 6 calls for (a) the center axis of the sleeve, cap/cover and lip applicator to be the same, and (b) the lip applicator to have a center axis that is the same center axis as the sleeve and cap/cover. However, the specification only provides support for the center axis of the sleeve and the center axis of each cap to be lined up in a generally straight line (note lines 8-11 on page 8).

20. Claim 7 is rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification fails to provide support for “the portion of the cover . . . where there is a thread on the interior thereof forming a band around said cover”, as called for by claim 7.

21. Claim 13 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that



Art Unit: 3751

the inventor(s), at the time the application was filed, had possession of the claimed invention. The originally filed disclosure fails to describe or provide support for the receptacle to have both "a rollerball applicator", as called for by claim 1, and "a doe foot applicator" as called for by claim 13. Hence, this claim is now directed to new matter.

22. Claims 15-17 and 19-25 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The originally filed disclosure fails to describe or provide support for the receptacle to have the combination of "a rollerball applicator" as called for by claim 1, "a brush" as called for by claim 15, another "rollerball applicator" as called for by claim 23, "a doe foot applicator" as called for by claim 24, and another "brush" as called for by claim 25. Hence, these claims are now directed to new matter.

23. Claim 17 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The originally filed disclosure fails to describe or provide support for the receptacle to have both "a rollerball applicator", as called for by claim 1, and "a mascara brush", as called for by claim 17. Hence, this claim is now directed to new matter.

24. Claims 23 and 24 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for the eye product in the second receptacle (note claim 11) to be applied by a rollerball arrangement (note lines 15-17 on page 9 and lines 12-13 on page 11) or a brush (note lines 12-13 on page 6), does not reasonably provide enablement for the applicator to constitute both a brush and roller ball (claim 23) or a brush and a doe foot (claim 24). The specification does not enable any person skilled in the art to which it pertains, or with

Art Unit: 3751

which it is most nearly connected, to make and use the invention commensurate in scope with these claims. Hence, these claims are directed to new matter.

25. Claims 19-25 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for facial products such as powders, creams, concealers, blemish control materials, etc. (note lines 8-9 on page 9) and eye products in the form of mascara and eye liner (note line 15 on page 9 and line 11 on page 11) does not reasonably provide enablement for an eye product that is in the form of powder, cream, concealer, blemish control material and facial product, as called for by claims 19-25 (which depend from claim 11 which calls for the product in the second receptacle to be an eye product). The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the invention commensurate in scope with these claims.

26. Claims 26-29 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The originally filed disclosure fails to describe or provide support for “a rollerball applicator” which is used to apply “a nail product” as called for by claim 26, “a nail polish” as called for by claim 27, or “a nail hardener” as called for by claim 28. Hence, these claims are directed to new matter.

27. Claim 29 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The originally filed disclosure fails to describe or provide support for the receptacle to have both “a rollerball applicator”, as called for by claim 1, and “a brush”, as called for by claim 29. Hence, this claim is now directed to new matter.

Art Unit: 3751

28. Claim 30 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The originally filed disclosure fails to describe or provide support for "a rollerball applicator" which is used to apply "a cosmetic serum" as called for by claim 30. Hence, this claim is now directed to new matter.

29. Claim 31 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The originally filed disclosure fails to describe or provide support for "a rollerball applicator" which is used to apply "lip products" as called for by claim 31. Hence, this claim is now directed to new matter.

30. Claims 32 and 33 are also rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The originally filed disclosure fails to describe or provide support for "one said ends having an applicator extending therefrom for applying a product and being adapted to receive a receptacle for containing said product", as now called for by claim 32 at lines 2-4.

31. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

32. Claims 1-31 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Art Unit: 3751

33. Claim 1 is indefinite since it fails to recite how the receptacle on line 4 structurally relates to the receptacle on line 5. Also, on line 7, "said receptacle" is indefinite since it is unclear as to which receptacle is being referred to, i.e., to the one recited on line 4 or the one recited on line 5.

34. Claim 1 contains a term lacking proper antecedent basis. The claim recites the limitation "the open end of said receptacle" in line 9. There is insufficient antecedent basis for this limitation in the claim.

35. Claim 14 is indefinite since it fails to recite how its rollerball applicator for applying an eye product structurally relates to the rollerball applicator now called for by claim 1.

36. Claim 23 is indefinite since it fails to recite how its rollerball applicator for applying a facial product structurally relates to the rollerball applicator now called for by claim 1.

37. Claim 7 contains a term lacking proper antecedent basis. The claim recites the limitation "the portion of the cover . . . where there is a thread on the interior thereof" in lines 1-2. There is insufficient antecedent basis for this limitation in the claim.

38. Claim 25 contains a term lacking proper antecedent basis. The claim recites the limitation "the facial product" in line 2. There is insufficient antecedent basis for the limitation in this claim.

39. Claim 25 is also indefinite since it is redundant of claim 15 (which already recites that the second receptacle has a brush) and does not further limit claim 15.

### ***Claim Rejections - 35 USC § 102***

40. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

41. Claim 32 is rejected under 35 U.S.C. 102(e) as being anticipated by Lang. Lang discloses a dual ended container having all the claimed features including a sleeve 10 having a first end and a second end (note lines 23-24 in col. 3), one of the ends having an applicator 28 extending therefrom (note Fig. 1) for applying a product and being adapted to receive a receptacle (constituted by barrel 22) for containing the product and wherein a lip product extends

Art Unit: 3751

from the second end of the sleeve 10 (note lines 37-39 in col. 2 and lines 48-52 in col. 4), and wherein the second end is adapted to receive a cap or closure 52 to protect the lip product (note Figs. 1-4).

***Claim Rejections - 35 USC § 103***

42. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

43. Claims 1-6 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lang in view of Breidenbach et al. ('960). Lang discloses a dual ended container having the claimed features including a sleeve 10 having a first end and a second end (note lines 23-24 in col. 3) which are connected by a sidewall (constituted by the outer tubular wall forming sleeve 10 — note Figs. 1 and 6), the sleeve 10 being open such that the sidewall forms an orifice or opening therein at each of the ends (note lines 23-24 in col. 3 and Fig. 6), the first end being configured so that it can receive the head or end of a receptacle or an applicator assembly (note lines 1-5 in col. 2), the first end also being adapted to receive a receptacle or an applicator assembly (constituted by either barrel 22 of assembly 20 or barrel 42 of assembly 40) for containing a product (note lines 55-56 in col. 3 and lines 9-10 in col. 4), the second end of the sleeve 10 having a lip product applicator extending therefrom (note lines 13-15 in col. 2 and lines 48-52 in col. 4), the lip product applicator being adapted to receive a cap or closure (32, 52) to protect the contents of the applicator (note lines 15-16 in col. 2), and the receptacle or applicator assembly 20 has a roller or roll-on ball 28 applicator. Although Lang fails to disclose that the roller or roll-on ball 28 applicator comprises a means consisting of a spring-biased applicator normally sealing the open end of the receptacle when the applicator is pressed inwardly, attention is directed to Breidenbach et al. who disclose another roller or roll-on ball applicator that uses a spring-loaded means which seals itself when the roller ball is withdrawn away from the skin of the user (note lines 7-14 in col. 1 and lines 1-5 in col. 3) in order to prevent spillage of the product (note lines 17-23 in col. 2). It would have been obvious to one of ordinary skill in the applicator art, at the

Art Unit: 3751

time the invention was made, to form the roller ball applicator of Lang with a spring-biased means which normally seals the open end of the receptacle when the applicator is pressed inwardly in view of the teachings of Breidenbach et al. in order to prevent spillage or leakage of the product especially when the product is not being applied. With respect to claim 2, Lang also discloses that the end of the sleeve 10 is threaded so that it is adapted to receive the threaded end (neck 24) of the receptacle 22 (note lines 55-58 in col. 3 and Fig. 1). With regard to claim 3, Lang further discloses that the product contained in the receptacle is a cosmetic product (note lines 37-39 in col. 2 and lines 48-52 in col. 4). With respect to claim 4, Lang further discloses that the sleeve 10, the cap 21 and the receptacle 23 have a cross section of the same shape (note Fig. 2). With respect to claim 5, Lang further discloses that the sleeve 10, the cap (32, 52) and the receptacle (42, 22) each have a cross section of the same size (note Figs. 1-5 and 7). With regard to claim 6, Lang additionally discloses that the center axes of the sleeve 10, the cap (32, 52) and the receptacle (42, 22) are the same (note Figs. 1-5 and 7). With respect to claim 31, Lang further discloses that both receptacles (42, 22) contain lip products (note lines 48-52 in col. 4).

44. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lang in view of Breidenbach et al. as applied to claims 1-6 and 31 above, and further in view of Dulberg. Although Lang seems to suggest that both ends of the sleeve 10 are provided with a threaded cap, cover or closure 32 (note Fig. 4 and lines 6-7 in col. 4), attention is directed to Dulberg who discloses another dual ended container having both caps 1 and 24 threaded. It would have been obvious to one of ordinary skill in the dual ended cosmetic container art, at the time the invention was made, to provide the sleeve 10 of Lang with caps that are both threaded in view of the teachings of Dulberg in order to prevent accidental removal of the caps especially when the cosmetic container is carried in a woman's handbag and to insure that the caps are securely attached.

45. Claims 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lang in view of Breidenbach et al. as applied to claims 1-6 and 31 above, and further in view of Coryell. Lang

Art Unit: 3751

further discloses that many combinations of various products can be dispensed from his container (note lines 4-11 in col. 1 and lines 34-43 in col. 2). Although Lang fails to specifically disclose that the product can contain a fragrance or perfume, attention is directed to Coryell who discloses another dual ended container wherein the liquid being dispensed in the liquid/lipstick container is perfume. It would have been obvious to one of ordinary skill in the dual ended cosmetic container art, at the time the invention was made, to provide the roll-on assembly of Lang with liquid perfume in view of the teachings of Coryell in order to provide a composite container that carries two of the most oftenly used cosmetic products that women carry in their handbags since both lipstick and perfume are often generally renewed during the course of a day.

46. Claims 11, 12 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lang in view of Breidenbach et al. as applied to claims 1-6 and 31 above, and further in view of Moriber et al. Lang further discloses that many combinations of various products can be dispensed from his container (note lines 4-11 in col. 1 and lines 34-43 in col. 2). Although Lang fails to specifically disclose that the product can contain an eye product, attention is directed to Moriber et al. who disclose another dual ended container wherein the products dispensed in the container are a lipstick and an eye product in the form of eye liner (note lines 43-49 in col. 3). It would have been obvious to one of ordinary skill in the dual ended cosmetic container art, at the time the invention was made, to provide the dual ended container of Lang with a lipstick and an eye product in the form of eye liner in view of the teachings of Moriber et al. in order to reduce the number of cosmetic containers that are carried by women in their handbags and to provide a composite container that carries two renewable, touch-up cosmetic products that women often carry in their handbags since both eye products and lipstick are most frequently touched-up during the course of a day.

47. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lang in view of Breidenbach et al. and Moriber et al. as applied to claims 11, 12 and 14 above, and further in view of Pieper et al. Lang further discloses that many dispensing combinations can be used in his container (note lines 48-65 in col. 4). Although Lang fails to specifically disclose that the

Art Unit: 3751

applicator can be a doe foot applicator, attention is directed to Pieper et al. who disclose another lipstick (note lines 52-54 in col. 3) applicator wherein the applicator can be one of a variety of applicators such as a doe foot (note lines 53-66 in col. 4). It would have been obvious to one of ordinary skill in the cosmetic container art, at the time the invention was made, to use as the lipstick applicator in Lang a doe foot applicator in view of the teachings of Pieper et al. in order to more accurately control the application of lipstick to the lips.

48. Claims 11, 14-17 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lang in view of Breidenbach et al. as applied to claims 1-6 and 31 above, and further in view of Younghusband. Lang further discloses that many combinations of various products can be dispensed from his container (note lines 4-11 in col. 1 and lines 34-43 in col. 2). Although Lang fails to specifically disclose that the product can contain an eye product, attention is directed to Younghusband who discloses another dual ended container wherein the liquid being dispensed in the liquid/lipstick container is an eye product in the form of mascara. It would have been obvious to one of ordinary skill in the dual ended cosmetic container art, at the time the invention was made, to provide the liquid dispenser of Lang with an eye product in the form of mascara in view of the teachings of Younghusband in order to reduce the number of cosmetic containers that are carried by women in their handbags and to provide a composite container that carries two renewable, touch-up cosmetic products that women often carry in their handbags since both mascara and lipstick are generally touched-up during the course of a day. With respect to claims 15, 17 and 25, Younghusband further teaches the obviousness of using a brush applicator for applying the mascara.

49. Claims 19-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lang in view of Breidenbach et al. and Younghusband as applied to claims 11, 14-17 and 25 above, and further in view of Riley et al. Lang further discloses that many combinations of various products can be dispensed from his container (note lines 4-11 in col. 1 and lines 34-43 in col. 2). Although Lang fails to specifically disclose that the product can be a facial product, powder, cream, concealer or blemish control product, attention is directed to Riley et al. who disclose



Art Unit: 3751

other cosmetic compositions or products for topical applications wherein the cosmetic product can include creams, serums and powders (note lines 28-33 in col. 5) in the form of a facial product for concealing fine lines, wrinkles, blemishes, spots and discolorations (note lines 3-9 in col. 3) for topical use to improve a person's appearance. It would have been obvious to one of ordinary skill in the cosmetic applicator art, at the time the invention was made, to provide the roll-on assembly of Lang with a facial product, powder, cream, concealer, blemish control product or cosmetic serum in view of the teachings of Riley et al. in order to reduce the number of cosmetic containers that are carried by women in their handbags since both lipstick and cosmetic cover-up products are generally renewed or touched-up during the course of a day.

50. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lang in view of Breidenbach et al. and Younghusband as applied to claims 11, 14-17 and 25 above, and further in view of Pieper et al. Lang further discloses that many dispensing combinations can be used in his container (note lines 48-65 in col. 4). Although Lang fails to specifically disclose that the applicator can be a doe foot applicator, attention is directed to Pieper et al. who disclose another lipstick (note lines 52-54 in col. 3) applicator wherein the applicator can be one of a variety of applicators such as a doe foot (note lines 53-66 in col. 4). It would have been obvious to one of ordinary skill in the cosmetic container art, at the time the invention was made, to use as the lipstick applicator in Lang a doe foot applicator in view of the teachings of Pieper et al. in order to more accurately control the application of lipstick to the lips.

51. Claims 26, 29 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lang in view of Breidenbach et al. as applied to claims 1-6 and 31 above, and further in view of Trabattoni. With respect to claim 26, Lang further discloses that many combinations of various products can be dispensed from his container (note lines 4-11 in col. 1 and lines 34-43 in col. 2). Although Lang fails to specifically disclose that the product can contain a nail product, attention is directed to Trabattoni who discloses another dual ended container wherein the liquid being dispensed in the liquid/lipstick container is a nail product. It would have been obvious to one of ordinary skill in the dual ended cosmetic container art, at the time the invention was made, to

Art Unit: 3751

provide the liquid dispenser of Lang with a nail product in view of the teachings of Trabattoni in order to reduce the number of cosmetic containers that are carried by women in their handbags and to provide a composite container that carries two renewable, touch-up cosmetic products that women often carry in their handbags since both lipstick and nail varnish are required for touch-up purposes, i.e., lipstick renews the color on the lips while nail polish is used to cover up nicks received during the course of a day. With regard to claim 29, Trabattoni further teaches the obviousness of using a brush applicator 30 for applying the nail product. With respect to claim 33, Lang also discloses that the sleeve 10 has a first section (constituted by the end which contains the barrel 22) and a second section (constituted by the opposite end which contains the barrel 42) which are connected by a sidewall (constituted by the outer tubular wall forming sleeve 10 — note Figs. 1 and 6), the first section and the second section being opened at each of the ends (note Fig. 6) and threaded (note lines 5-7 in col. 4 and Fig. 4) so that they are adapted to receive a threaded end of a respective receptacle (note Fig. 1) which contains a product.

52. Claims 27 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lang in view of Breidenbach et al. and Trabattoni as applied to claims 26, 29 and 33 above, and further in view of Ferrari. Although Trabattoni fails to describe what is intended by nail varnish, attention is directed to Ferrari who discloses another nail varnish or lacquer that includes both nail polish, as called for by claim 27, and nail hardener, as called for by claim 28. It would have been obvious to one of ordinary skill in the cosmetic applicator art, at the time the invention was made, to use a nail varnish/lacquer in Lang as modified by Trabattoni in the form of nail polish, as called for by claim 27, or nail hardener, as called for by claim 28, in order to touch-up polished nails and/or to cover up nicks received during the course of a day.

53. Claims 18 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lang in view of Breidenbach et al. as applied to claims 1-6 and 31 above, and further in view of Riley et al. Lang further discloses that many combinations of various products can be dispensed from his container (note lines 4-11 in col. 1 and lines 34-43 in col. 2). Although Lang fails to specifically disclose that the product can be a facial product or a cosmetic serum, attention is directed to

Art Unit: 3751

Riley et al. who disclose other cosmetic compositions or products for topical applications wherein the cosmetic product can include creams, serums and powders (note lines 28-33 in col. 5) in the form of a facial product for concealing fine lines, wrinkles, blemishes, spots and discolorations (note lines 3-9 in col. 3) for topical use to improve a person's appearance. It would have been obvious to one of ordinary skill in the cosmetic applicator art, at the time the invention was made, to provide the roll-on assembly of Lang with a facial product, powder, cream, concealer, blemish control product or cosmetic serum in view of the teachings of Riley et al. in order to reduce the number of cosmetic containers that are carried by women in their handbags since both lipstick and cosmetic cover-up products are generally renewed or touched-up during the course of a day.

#### *Response to Arguments*

54. Applicant's arguments filed February 5, 2004 (Paper No. 9) have been fully considered but they are not deemed persuasive.

55. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

#### *Conclusion*

56. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

Art Unit: 3751

however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

57. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Kathleen J. Prunner whose telephone number is 703-306-9044.

58. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory L. Huson can be reached on 703-308-2580. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

59. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Kathleen J. Prunner

April 22, 2004



GREGORY L. HUSON  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700